

ENTERED

October 20, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

JAMES SCHORSCH, JR.,

Plaintiff,

v.

PATTY ANDERSON, *et al*,

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:23-CV-00240

ORDER

On September 28, 2023, Plaintiff **James Schorsch, Jr., ID No. 1551453**, applied for leave to proceed *in forma pauperis*. (Doc. Nos. 5, 6.) On September 29, 2023, the Court granted Plaintiff's request, ordering Plaintiff to pay an initial partial filing fee of **\$24.56**. *See* Doc. No. 7; *id.* at 1 ¶ 2. On October 19, 2023, Plaintiff again filed for leave to proceed *in forma pauperis* (Plaintiff's "second motion"). (Doc. No. 8.) Because the Court has already granted Plaintiff's request to proceed *in forma pauperis*, the Court **DENIES** Plaintiff's second motion as **MOOT**.

If, however Plaintiff has filed his second motion as a motion for reconsideration of the Court's original Order (Doc. No. 7), the Court also **DENIES** Plaintiff's request. The Prison Litigation Reform Act (PLRA) requires prisoners filing lawsuits to pay an initial partial filing fee. The PLRA also requires prisoners to pay the balance of the full filing fee of \$350. The Court considered Plaintiff's original application in light of the PLRA and determined the initial partial filing fee amount of **\$24.56** by calculating 20% of either the average monthly deposits to Plaintiff's Prisoner Trust Fund Account or the six-month average balance in Plaintiff's Prisoner Trust Fund Account (Doc. No. 6), "*whichever is greater.*" *See* Doc. No. 7, p. 1 ¶ 2 (emphasis added). The Court therefore calculated 20% of both Plaintiff's average monthly deposits and

Plaintiff's six-month average balance, finding that Plaintiff's six-month average balance was, in fact, greater.

Finally, to the extent Plaintiff moves the Court to waive payment of the initial partial filing fee and the balance of the \$350.00 filing fee required to continue with this civil action, Plaintiff's motion is **DENIED**. As explained above, and in the Court's original Order, the PLRA requires prisoners to pay the full filing fee of \$350. *See* Doc. No. 7, p. 1. However, prisoners who are unable to do so at the start of the civil action may, as Plaintiff did, apply to proceed *in forma pauperis*, enabling prisoners to pay the filing fee in monthly installments, deducted by the institution having custody of the prisoner, beginning with an initial partial filing fee as calculated by the prisoner's trust fund account. If Plaintiff decides he does not wish to pay the filing fee as set forth in this Order and the Court's initial Order (Doc. No. 7), Plaintiff may instead choose to dismiss the case by notifying the Court in writing, by letter or motion,¹ that Plaintiff does not wish to prosecute this civil action. Plaintiff's notice must be mailed within 30 days from the entry of this Order. If Plaintiff chooses to voluntarily dismiss this case, the Court will therefore vacate its original Order and no longer require Plaintiff to pay an initial filing fee to proceed *in forma pauperis*.

Plaintiff should note, as the Court's original Order did in its Notice to Plaintiff (Doc. No. 7, p. 3), that payment of all or any part of the full filing fee will not prevent dismissal of the complaint if it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. If the case is dismissed on any of those grounds before payment of the entire filing fee, the plaintiff must still pay the entire filing fee. State law requires the forfeiture of good conduct time credits as a sanction for

¹ A template for a Motion for Voluntary Dismissal is provided on the last page of this Order.

any state or federal lawsuit brought by an inmate while in the custody of the Texas Department of Criminal Justice–Correctional Institutions Division, which is dismissed as frivolous or malicious. TEX. GOVT. CODE ANN. § 498.0045.

When a prisoner has had three or more prior actions or appeals dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted, federal law prohibits the prisoner from bringing any more actions or appeals *in forma pauperis* unless the plaintiff is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Whether Plaintiff chooses to pay the initial filing fee of \$24.56 and continue to make payments toward the remaining balance of the full filing fee of \$350 or dismiss this case, Plaintiff should adhere to the instructions stated in the Court’s original Order (Doc. No. 7.) Again, if Plaintiff chooses to voluntarily dismiss this case, Plaintiff must mail a written notice of dismissal within 30 days from the entry of this order.

Accordingly, the Court **DENIES** Plaintiff’s second motion to proceed *in forma pauperis* (Doc. No. 8). The Clerk will send a copy of this Order by certified or first-class mail to **Texas Department of Criminal Justice Court Collections/Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629 (Re: James Schorsch, Jr., ID No. 1551453, William G. McConnell Unit, Beeville, Texas).**

ORDERED on October 20, 2023.


MITCHEL NEUROCK
United States Magistrate Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

JAMES SCHORSCH, JR.,

Plaintiff,

v.

PATTY ANDERSON, *et al*,

Defendants.

§
§
§
§
§
§
§

CIVIL ACTION NO. 2:23-CV-00240

MOTION FOR VOLUNTARY DISMISSAL

I, James Schorsch, Jr., Plaintiff, seek voluntary dismissal under Federal Rule of Civil Procedure 41(a), because I do not want to pay the filing fee in this case.

Plaintiff, James Schorsch, Jr.

Date